

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921

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No. 48

THE UNITED STATES OF AMERICA, PLAINTIFF IN  
ERROR,

VS.

PAUL SACKS.

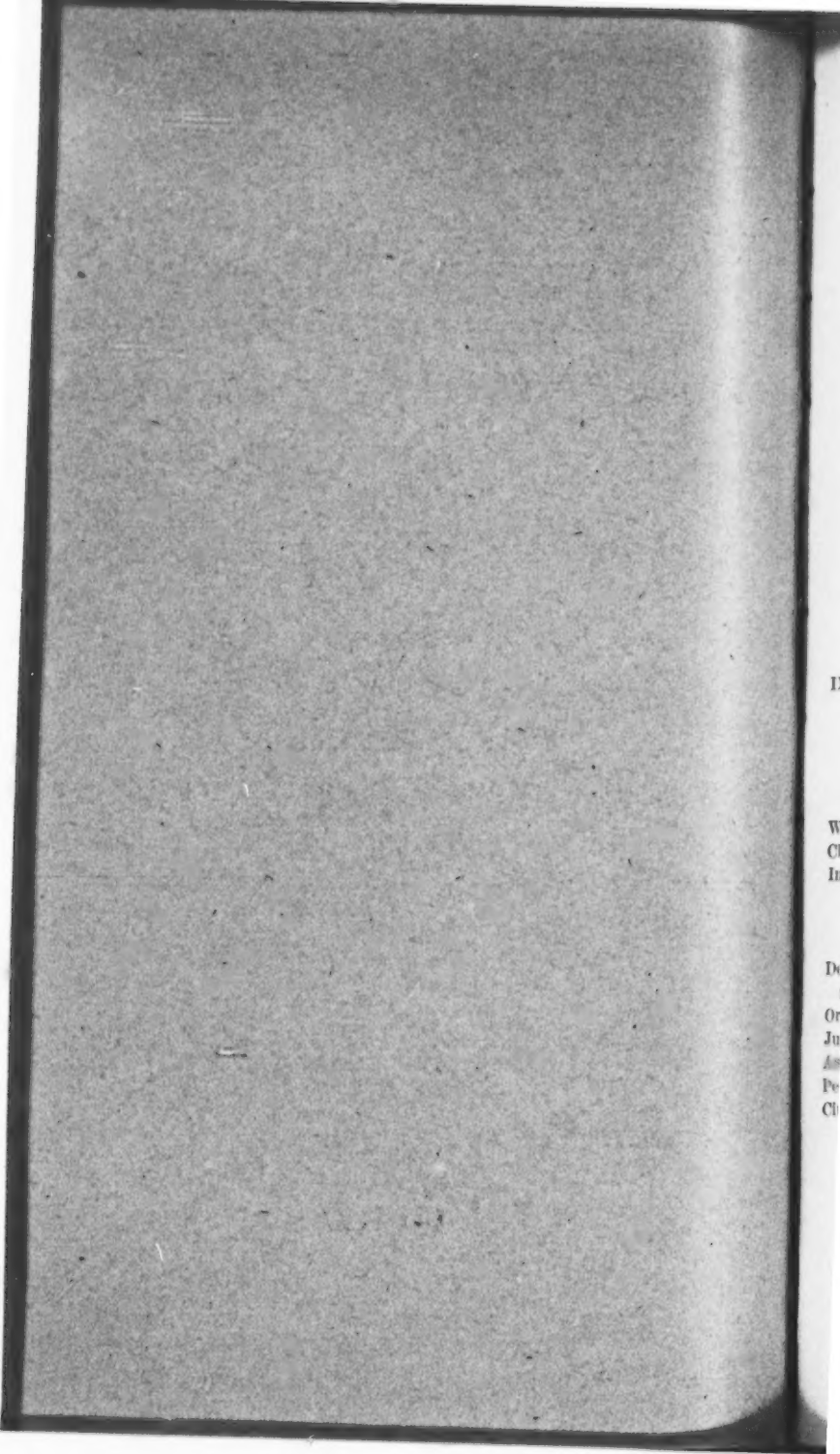
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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

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FILED MAY 10, 1920.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 330.

THE UNITED STATES OF AMERICA, PLAINTIFF IN  
ERROR,

vs.

PAUL SACKS.

APPEAL FROM A DECISION OF THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

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The President of the United States of America to the honorable judges of the District Court of the United States for the Southern District of New York in the second circuit.

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use, in the record and proceedings, as also in the rendition of judgment of a plea, judges in the said District Court of the United States for the Southern District of New York, before you, of you, between the United States of America and Paul a manifest error hath happened to the great damage of the United States of America, as by its complaint appears, being willing that such error if any hath been, should be duly redressed and full and speedy justice done to the part aforesaid in behalf, do command you, if judgment be therein given, that then by your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the District Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, City of Columbia, within thirty days from the date hereof. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that which is wrong of right and according to the laws and customs of the United States ought to be done.

In witness, the honorable Edward D. White, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand nine hundred and twenty.

L.]

ALEX. GILCHRIST, JR.,

*clerk of the District Court of the United States of America for the Southern District of New York.*

The foregoing writ is hereby allowed.

LEARNED HAND,

*United States District Judge.*

UNITED STATES OF AMERICA,

*Southern District of New York, ss:*

Alex. Gilchrist, jr., clerk of the District Court of the United States of America for the Southern District of New York, in the second circuit, by virtue of the foregoing writ of error, and in compliance thereto, do hereby certify that the following pages numbered from four to 37, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of the United States, plaintiff in error, vs. Paul Sacks, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 23rd day of April, in the year of our Lord one thousand nine hundred and twenty, and

of the Independence of the United States the one hundred and forty-fourth.

[SEAL.]

ALEX. GILCHRIST, Jr.,  
*Clerk.*

3 (Endorsed:) C 20-251. U. S. District Court, Southern District of New York. The United States, plaintiff in error, versus Paul Sacks, defendant in error. Writ of error.

Francis G. Caffey, United States attorney, attorney for plff. in error. U. S. District Court. Filed Mar. 27, 1920, S. D. of N. Y.

4

*Indictment.*

In the District Court of the United States of America for the Southern District of New York.

*Southern District of New York, ss:*

The grand jurors of the United States of America being duly empaneled and sworn in the District Court of the United States for the Southern District of New York and inquiring for said district on their oath present that heretofore, to wit, on the 1st day of October, 1919, at the Southern District of New York and within the jurisdiction of this court, Paul Sacks did, with intent to defraud, alter an obligation of the United States, to wit, a war savings certificate of the United States of the series of 1918, Numbered 31123061, bearing the name Peter P. Balles, 17½ Clark St., Binghamton, New York, in that the said defendant did then and there tear from the face of said war savings certificate two war savings certificate stamps of the United States of the series of 1918, thereto before attached; that the said obligation of the United States so with intent to defraud, altered by the said defendant, marked "Exhibit A," is hereto attached and made a part of this indictment; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Section 148 U. S. C. C.)

*Second Count.*

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on the 1st day of October, 1919, at the Southern District of New York and within the jurisdiction of this court, Paul Sacks did, with intent to defraud, alter an obligation of the United States, to wit, a war savings certificate of the United States of the series of 1918, Numbered 21607022, bearing the name Ethel C. Hickox, 11 Laurel St., Johnson City, Broome

County, New York, in that the said defendants did then and there tear from the face of said war savings certificate two war savings certificate stamps of the United States of the series of 1918, marked "Exhibit B," thereto before attached; that

5

the said obligation of the United States so with intent to defraud, altered by the said defendant, marked "Exhibit B," is hereto attached and made a part of this indictment; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Section 148, U. S. C. C.)

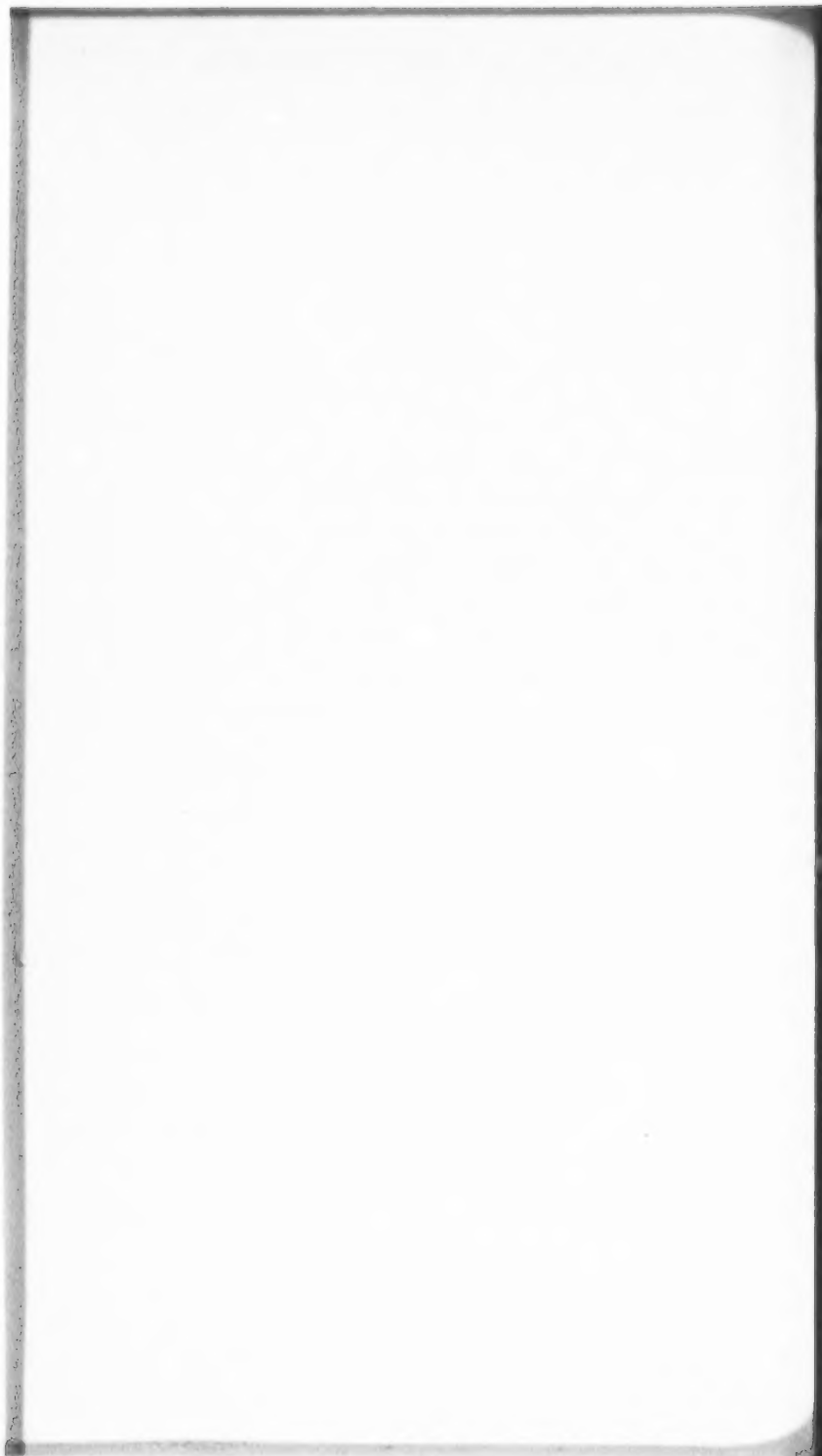
*Third count.*

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on the 13th day of November, 1919, at the Southern District of New York and within the jurisdiction of this court, Paul Sacks unlawfully, wilfully, and knowing the same to have been altered, have and keep in his possession with intent to defraud the United States and with intent to pass and sell the same, an altered obligation of the United States, to wit, a portion of a war saving certificate of the United States of the series of 1918, with three war savings certificate stamps thereto attached; that the said obligation of the United States was altered in that the portion thereof, which the defendant did have and keep in his possession, had been torn from a whole war savings certificate; that the altered obligation of the United States which the defendant did have and keep in his possession is marked "Exhibit C," attached hereto and made a part of this indictment; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Section 151, U. S. C. C.)

FRANCIS G. CAFFEY,

*United States Attorney.*

(Here follows Exhibits A, B, and C.)



3, 7

EXHIBIT A.



15

AFFIX ONLY  
\$500 WAR SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



16

AFFIX ONLY  
\$500 WAR SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



17

AFFIX ONLY  
\$500 WAR SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



18

AFFIX ONLY  
\$500 WAR SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



19

AFFIX ONLY  
\$500 WAR SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



20

AFFIX ONLY  
\$500 WAR SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918

# UNITED STATES OF AMERICA WAR-SAVINGS CERTIFICATE



## CERTIFICATE

*This certifies that, subject to the terms and conditions printed herein, the owner named in the back hereof will be entitled to receive on January 1, 1923, in respect of each United States War-Savings Certificate Stamp of the Series of 1918 then affixed hereto, the amount indicated thereon as then payable or at expiration, will be entitled to receive at any earlier date in respect of such such Stamp then affixed hereto the sum or amount indicated in the table printed herein.*

January 2, 1918

M. L. C. D. O.

Secretary of the Treasury

## TERMS AND CONDITIONS

1. This certificate is not a valid obligation unless a United States War-Savings Certificate Stamp of the Series of 1918 is affixed hereto.

2. This certificate is of no value except to the owner named hereon, and is not transferable.

3. Not more than twenty United States War-Savings Certificate Stamps, and only such Stamps of the Series of 1918, may be affixed hereto.

4. This certificate may be registered at any post office of the first, second, or third class, subject to such regulations as the Postmaster General may prescribe. Unless registered, the United States will not be liable if payment be made to a person not the rightful owner.

5. This certificate, if not registered, is payable at any money-order post office, and on January 1, 1923, at the Treasury Department in Washington, but if registered, is payable only at the post office where registered. No post-office, however, is required to make payment, either on January 1, 1923, or on any other date, until ten days after receiving written demand therefor.

6. The law provides that no one person shall at any one time hold War-Savings Certificates to an aggregate amount exceeding One Thousand Dollars.

7. Upon payment hereof, this certificate must be surrendered and the receipt printed hereon must be signed by the owner in the presence of the official to whom surrendered. In case of death or disability a special receipt must be signed in form prescribed by the Secretary of the Treasury. Upon furnishing evidence of loss of a registered certificate satisfactory to the Secretary of the Treasury, the owner thereof shall be entitled to receive payment of the amount for which it shall have been registered.

Table showing how a War-Savings Certificate increases in value in respect of each War-Savings Certificate Stamp of the series of 1918 thereto affixed:

Month	1918	1919	1920	1921	1922
January	4.12	4.24	4.36	4.48	4.60
February	4.13	4.25	4.37	4.49	4.61
March	4.14	4.26	4.38	4.50	4.62
April	4.15	4.27	4.39	4.51	4.63
May	4.16	4.28	4.40	4.52	4.64
June	4.17	4.29	4.41	4.53	4.65
July	4.18	4.30	4.42	4.54	4.66
August	4.19	4.31	4.43	4.55	4.67
September	4.20	4.32	4.44	4.56	4.68
October	4.21	4.33	4.45	4.57	4.69
November	4.22	4.34	4.46	4.58	4.70
December	4.23	4.35	4.47	4.59	4.71
January 1, 1923					5.00



1

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP



5

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



9

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



2

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



6

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



10

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



11

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



12

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



3

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



7

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



13

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



4

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



8

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918



14

AFFIX ONLY  
\$5.00 WAR-SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918

# UNITED STATES WAR-SAVINGS CERTIFICATE

SERIES OF 1918

No 31123061

SERIES A

Name in Full

Street Address

City or Town

County

State

Received \$\_\_\_\_\_ in payment hereof, I hereby  
certify that I am the identical person named above and the  
owner of this certificate, that I am receiving payment on my  
own behalf and not for any other person, and that I do not  
hold War-Savings Certificates to an aggregate amount exceed-  
ing One Thousand Dollars.

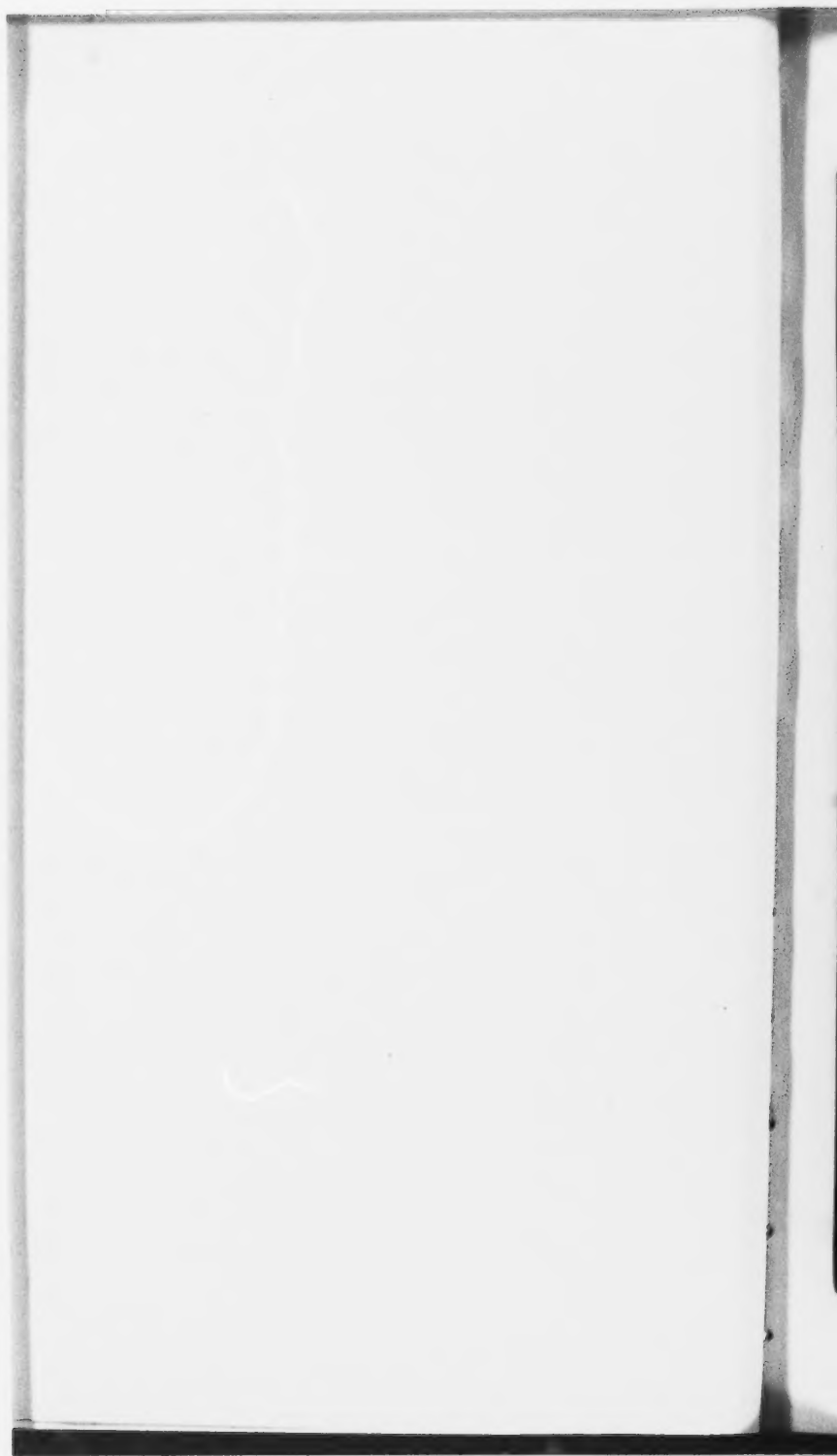
Date

Signature of Owner

SPACE FOR REGISTRATION

Office Number

Registration Number







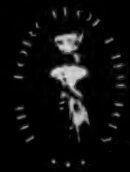
15

AFFIX ONLY  
\$75 WAR SAVINGS  
CERTIFICATE STAMP



16

AFFIX ONLY  
\$75 WAR SAVINGS  
CERTIFICATE STAMP



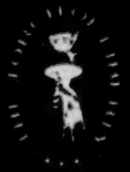
17

AFFIX ONLY  
\$75 WAR SAVINGS  
CERTIFICATE STAMP



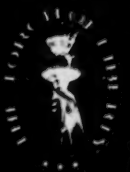
18

AFFIX ONLY  
\$75 WAR SAVINGS  
CERTIFICATE STAMP



19

AFFIX ONLY  
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CERTIFICATE STAMP



20

AFFIX ONLY  
\$75 WAR SAVINGS  
CERTIFICATE STAMP

# UNITED STATES OF AMERICA WAR-SAVINGS CERTIFICATE

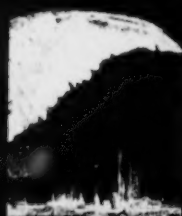


CERTIFICATE

*This certifies to the terms and conditions herein the one the back hereof were received in payment of each United States Certificate Stamp of the amount herein stated the one as a subscription will be over at any quarter of each such stamp held the term in the table from January 1, 1918*



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## TERMS AND CONDITIONS

## TERMS AND CONDITIONS

1. This certificate is not a valid obligation unless a United States War Savings Certificate Stamp of the Series of 1918, may be affixed hereto.
2. This certificate is of no value except to the owner named hereon, and is not transferable.
3. Not more than twenty United States War Savings Certificate Stamps, and only such Stamps of the Series of 1918, may be affixed hereto.
4. This certificate may be registered at any post office of the first, second, or third class, subject to such regulations as the Postmaster General may prescribe. Unless registered, the United States will not be liable if payment be made to a person not the rightful owner.
5. This certificate, if not registered, is payable at any money-order post office, and on January 1, 1923, at the Treasury Department in Washington, but if registered, is payable only at the post office where registered. No post office, however, is required to make payment, either on January 1, 1923, or on any other date until ten days after receiving written demand therefor.
6. The law provides that no one person shall at any one time hold War-Savings Certificates to an aggregate amount exceeding One Thousand Dollars.
7. Upon payment hereof, this certificate must be surrendered and the receipt printed hereon must be signed by the owner in the presence of the official to whom surrendered. In case of death or disability a special receipt must be signed in form prescribed by the Secretary of the Treasury. Upon furnishing evidence of loss of a registered certificate satisfactory to the Secretary of the Treasury, the owner thereof shall be entitled to receive payment of the amount for which it shall have been registered.

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June	4.17	4.29	4.41	4.53	4.65
July	4.18	4.30	4.42	4.54	4.66
August	4.19	4.31	4.43	4.55	4.67
September	4.20	4.32	4.44	4.56	4.68
October	4.21	4.33	4.45	4.57	4.69
November	4.22	4.34	4.46	4.58	4.70
December	4.23	4.35	4.47	4.59	4.71
<b>January 1, 1923</b>					<b>5.00</b>

**UNITED STATES  
WAR SAVINGS CERTIFICATE**

**No 21607022**

**SERIES A**

*Handwritten:*  
Name  
Address  
City

State

I hereby certify that in payment hereof, I hereby  
pay to the person named above and the  
beneficiary thereof the sum of \$5.00  
that I am receiving payment on my  
part for the purchase of this certificate  
by other person, and that I do not  
owe to an aggregate amount exceed

Signature of Owner

FOR REGISTRATION



**3**

**AFFIX ONLY  
\$5.00 WAR SAVINGS  
CERTIFICATE STAMP**

**SERIES OF 1918**



**4**

**AFFIX ONLY  
\$5.00 WAR SAVINGS  
CERTIFICATE STAMP**

**SERIES OF 1918**



**7**

**AFFIX ONLY  
\$5.00 WAR SAVINGS  
CERTIFICATE STAMP**

**SERIES OF 1918**



**8**

**AFFIX ONLY  
\$5.00 WAR SAVINGS  
CERTIFICATE STAMP**

**SERIES OF 1918**



**12**

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CERTIFICATE STAMP**

**SERIES OF 1918**



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CERTIFICATE STAMP**

**SERIES OF 1918**



**14**

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\$5.00 WAR SAVINGS  
CERTIFICATE STAMP**

**SERIES OF 1918**



1

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SERIES OF 1918



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SERIES OF 1918



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SERIES OF 1918



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SERIES OF 1918



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CERTIFICATE STAMP  
SERIES OF 1918



11

AFFIX ONLY  
\$500 WAR SAVINGS  
CERTIFICATE STAMP  
SERIES OF 1918

# UNITED STATES WAR-SAVING SERIES OF 1918

Name in Full

Street Address

City or Town

County

Received \$  
I certify that I am the  
owner of this certificate  
on my own behalf and not for  
the use of any other person  
to hold War-Savings Certi-  
ficate One Thousand Dollars

Date

SPAC

Office Number

Registration Number



1

AFFIX ONLY  
\$5.00 WAR SAVINGS  
CERTIFICATE STAMP

SERIES OF 1918



2

AFFIX ONLY  
\$5.00 WAR SAVINGS  
CERTIFICATE STAMP

SERIES OF 1918


UNITED STATES  
WAR SAVINGS  
CERTIFICATE  
STAMP

COST 1918 JAN 4.12 DOLLARS	WHEN AFFIXED TO A CERTIFICATE	COST 1918 JULY 4.18 DOLLARS
FEB 4.13 DOLLARS		AUG 4.19 DOLLARS
MAR 4.14 DOLLARS		SEPT 4.20 DOLLARS
APR 4.15 DOLLARS		OCT 4.21 DOLLARS
MAY 4.16 DOLLARS		NOV 4.22 DOLLARS
JUNE 4.17 DOLLARS		DEC 4.23 DOLLARS
5 DOLLARS		
SERIES OF 1918 1923 SERIES OF 1918		

UNITED STATES  
WAR SAVINGS  
CERTIFICATE  
STAMP

COST 1918 JAN 4.12 DOLLARS	WHEN AFFIXED TO A CERTIFICATE	COST 1918 JULY 4.18 DOLLARS
FEB 4.13 DOLLARS		AUG 4.19 DOLLARS
MAR 4.14 DOLLARS		SEPT 4.20 DOLLARS
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5 DOLLARS		
SERIES OF 1918 1923 SERIES OF 1918		

UNITED STATES  
WAR SAVINGS  
CERTIFICATE  
STAMP

COST 1918 JAN 4.12 DOLLARS	WHEN AFFIXED TO A CERTIFICATE	COST 1918 JULY 4.18 DOLLARS
FEB 4.13 DOLLARS		AUG 4.19 DOLLARS
MAR 4.14 DOLLARS		SEPT 4.20 DOLLARS
APR 4.15 DOLLARS		OCT 4.21 DOLLARS
MAY 4.16 DOLLARS		NOV 4.22 DOLLARS
JUNE 4.17 DOLLARS		DEC 4.23 DOLLARS
5 DOLLARS		
SERIES OF 1918 1923 SERIES OF 1918		



10

AFFIX ONLY  
\$5.00 WAR SAVINGS  
CERTIFICATE STAMP

SERIES OF 1918

## TERMS AND CONDITIONS

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2. This certificate is of no value except to the owner named hereon, and is not transferable.

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**Table showing how a War-Savings Certificate increases in value in respect of each War-Savings Certificate Stamp of the series of 1918 thereto affixed.**

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May	4.16	4.28	4.40	4.52	4.64
June	4.17	4.29	4.41	4.53	4.65
July	4.18	4.30	4.42	4.54	4.66
August	4.19	4.31	4.43	4.55	4.67
September	4.20	4.32	4.44	4.56	4.68
October	4.21	4.33	4.45	4.57	4.69
November	4.22	4.34	4.46	4.58	4.70
December	4.23	4.35	4.47	4.59	4.71
<b>January 1, 1923</b>					<b>5.00</b>

11 (Endorsed:) U. S. District Court. The United States of America vs. Paul Sacks. Indictment. Altering and passing altered obligations of the United States with intent to defraud and intent to pass. Sections 148 and 151, U. S. C. C., Francis G. Caffey, U. S. attorney. A true bill. F. C. Buckhurst, foreman. U. S. District Court, S. D. of N. Y., filed Dec. 1, 1919.

1919, Dec. 10. Deft. pleads not guilty.

1920, Feb. 11. Petition of Paul Sacks to quash indictment.

Feb. 13. Filed memo. opinion, Hough, C. J. Motion denied without prejudice to any rights of deft. to ask same or equivalent relief at trial.

Feb. 27. Filed opinion, Hough, J. Motion to quash granted and demurrer sustained.

12 *Opinion.*

District Court of the United States, Southern District of New York.

UNITED STATES OF AMERICA,	}	Indictment 7828. Docket No. C 20-251.
<i>vs.</i>		
PAUL SACKS,		

UNITED STATES,	}	Indictment 8269. Docket C 21-170.
<i>vs.</i>		
HERMAN JANOWITZ, HERMAN OESTREICHER,		
Henry Goldstein, Etta Levine, Julius Roth,		
and John C. Dalton.		

The case of Sacks having been called for trial, defendant moved in open court to quash the indictment on the ground that upon the true construction of the statutes suggested as authorizing the prosecution, Sacks could not be guilty.

The case of Janowitz et al. being likewise called on the day calendar for trial, defendants with the consent of the prosecutor moved to withdraw their pleas of not guilty and offer a demurrer to the indictment. The motion was granted, and on a day subsequent both the motion to quash and the demurrer were argued at length.

The cases are thought to be typical of a considerable number of prosecutions now pending in this district, and considering the nature of the criminality alleged and the diversity of opinion that has arisen thereupon it has seemed best to permit, and indeed facilitate, the presentation of the legal questions in such shape that if decided adversely to the prosecution, authoritative review will be not only possible but expeditious.

13 The several counts of these indictments rest not only upon the sections of the Criminal Code hereinafter pointed out, but on the 6th section of the act of September 24, 1917 (which author-



ized "war savings certificates") and the 2d section of the act of September 24, 1918, but upon a series of "department circulars" issued from the office of the Secretary of the Treasury and of which this court has taken judicial notice.

These circulars are No. 94, or war saving circular No. 1, dated November 15, 1917; No. 108, or war saving circular No. 8, dated January 21, 1918; No. 101, war saving circular No. 5, dated February 19, 1918, and No. 128, dated December 18, 1918.

The first and second counts of the Sacks indictment allege violation of section 148 of the Criminal Code in that Sacks with intent to defraud altered an obligation of the United States, to wit, a war saving certificate, by tearing a war saving stamp of 1918 therefrom.

The second count of the Janowitz indictment alleges that the defendants conspired to violate section 148 in that they purchased certificates of the series both of 1918 and 1919 from persons not authorized to sell the same by the Secretary of the Treasury; that they also obtained war saving certificates to which stamps had never been affixed and on which no owner's name had ever been written, and that they intended and agreed to detach the stamps from the purchased certificates and affix the same to the blank certificates, to the end that in the name of some person other than the defendants the certificates might be presented for redemption at a post office and at a date prior to maturity.

14 Thus Sacks is accused under what is usually called the counterfeiting statute, and Janowitz et al. are accused of conspiring to commit the same offense.

The third count of the Sacks indictment rests on section 148 of the Criminal Code, and charges the defendant with keeping possession with intent to defraud an altered obligation of the United States, that is to say, a piece of pasteboard obviously torn from a certificate of the series of 1918 and having three stamps affixed. The original documents said to have been forged or altered by Sacks are annexed to and made a part of the indictment against him.

The first count of the Janowitz indictment charges under section 37 of the Criminal Code a conspiracy to defraud the United States by doing exactly the same things as are specified in the second count to constitute a conspiracy to commit an offense under sec. 148.

The scienter as to fraud is thus set forth:

"And the defendants would and did then and there well know that the United States was not obligated to pay them money for the said purchased certificates, for the said purchased stamps, or the said blank certificates, and that the said purchased certificates, the said purchased stamps, and the said blank certificates were worthless in their hands, and that they were not, that not one of them was entitled to receive payment therefor from the United States at or before maturity thereof, and that the United States was not obligated

to pay them or any one of them therefor at or prior to maturity thereof."

Joseph A. Seidman for Sacks:

David Goldstein and Aiken A. Pope for Janowitz, Oestreicher, and Goldstein:

John McKim Minton, jr., and Joseph F. Curren for Levine;

15 Francis G. Caffey, U. S. Attorney, and

James W. Osborne, special assistant to the Attorney General for the United States.

*Memorandum decision.*

The words of the act of Congress especially invoked in this matter are that "it shall not be lawful for any one person at any one time to hold war savings certificates to an aggregate amount exceeding \$1,000," and the further provision: "the Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue \* \* \* stamps to evidence payments for or on account of such certificates." It was under this statute that the issue of 1918 was put forth; the only material difference as to the issue of 1919 was an amendment of the act declaring that "it shall not be lawful for any one person at any one time to hold war savings certificates of any one series to an aggregate amount exceeding \$1,000."

Department circulars Nos. 94, 101, and 108 may reasonably be taken from their date to apply to the issue of 1918. Circular No. 128 is the announcement of the certificate series of 1919, but I do not think that circular changed the material regulations previously issued and affecting all war saving certificates.

I have assumed that all these circulars are to be treated as Treasury regulations, although only one of them (No. 108) is called by that name.

Circular 94 declares that a war saving certificate of the series of 1918 "will be an obligation of the United States when and only when" at least one stamp is affixed thereto; but the Secretary "offers for sale" war savings certificates payments for or on account of which "must be evidenced by" stamps which "are to be affixed thereto."

16 It is declared that no certificate will be issued unless at least one stamp shall at the same time be purchased and affixed thereto, but "no additional charge" will be made for the certificate itself. It is required that the name of the owner of each certificate must be written thereupon "at the time of the issue thereof."

It is then declared by No. 94 that "War savings certificates are not transferrable and will be payable only to the respective owners named thereon" except in events not now material. I think these were all the instructions, regulations, or rules in existence at the time stamps were first put on sale.

No. 108, which is formally entitled as a "Treasury regulation," contains in its fourteenth paragraph the language thought to be most important in this litigation.

It is by that rule provided that if any person receives certificates in excess of an aggregate of one thousand dollars maturity value in any lawful manner, the excess amount shall be immediately surrendered at a money-order post office and be paid for at their then value; but "in any other case if it shall appear at the time a certificate is presented for payment that the person presenting the same holds certificates to an aggregate amount exceeding a thousand dollars maturity value, the postmaster shall refuse payment of all certificates in excess of such amount and shall demand surrender of certificates held by such owner until the holdings of such owner are reduced to a thousand dollars maturity value. The postmaster shall make appropriate notation on certificates so surrendered and shall

forward such certificates to the Third Assistant Postmaster General for transmission to the Secretary of the Treasury. Such certificates shall have no validity for any purpose."

Under these rules or regulations and the statute it has been admitted on this argument that a war saving stamp is property in the ordinary sense of the word; that it may pass from hand to hand like any other similar piece of property.

Yet it is said that this property has no value in and of itself; it is but a receipt for a certain amount of money; but when it is affixed, not to any certificate of the corresponding series, but to a certificate bearing the name of the person who obtained it from an agent of the Treasury and still owned by that person, it becomes an integral, irremovable portion of an indissoluble obligation of the United States.

The remainder of the Treasury or prosecutor's position is that if by purchase one accumulates certificates bearing stamps in excess of a thousand dollars' maturity value such excess is subject to confiscation if the Postmaster can get hold of it; but in any event the excess certificates "shall have no validity for any purpose."

Applying these regulations to these indictments it is observable that in the Sacks indictment there is no effort to apply, and that instrument bears no relation to, regulation No. 14. It is not alleged that Sacks had or tried to get more than a thousand dollars' worth of certificates of the series of 1918 (maturity value). The proposition is, baldly, that when Sacks removed a stamp from a certificate bearing a name not his own, and did it "with intent to defraud," he became what is commonly called a counterfeiter under section 148. And

in the third count it is alleged in substance that when Sacks had in possession "with intent to defraud the United States and with intent to pass and sell the same" a piece of paste-board having certain stamps upon it, he was criminally possessed of a counterfeited obligation of the United States under section 151.

In other words, the excess proviso of the Treasury regulation has no application to the Sacks indictment.

The Janowitz indictment is more subtle, for both counts allege in substance a business scheme, viz: The purchase of war saving certificates with intent to detach stamps therefrom and use them upon other certificates bearing other names.

But nowhere is it alleged as a part of the conspiracy that any member of the postal force was to be corrupted in order that the defendants might procure money for any certificates either before or after maturity. The proposition baldly is that purchased certificates and the stamps affixed thereto were worthless for any purpose in the hands of the purchaser, no matter whether the amount of such purchased certificates was small or great; the proposition is that when affixed to a certificate the united stamp and pasteboard became irrevocable and can not be disunited; and the moment such legal title passes from the hand of the original holder (by purchase at maturity or by gift or otherwise) to the hand of another, it crumbles into legal dust and becomes, in the language of the Janowitz indictment, "worthless in their hands" (i. e., the purchaser's hands), and so worthless that payment could never become due either "at or before maturity."

It may here be noted that the language of the stamp of the series of 1918 is this: "United States War Savings Certificate Stamp.

When affixed to a certificate, Five dollars will be payable January 1, 1923."

One other matter has in argument at this bar been admitted as a fact, viz: That when Congress said that it should "not be lawful" for any one person at any one time to hold more than a thousand dollars' worth of war-savings certificates, Congress did not make such holding a crime.

To me it appears very plain that the foregoing element of discussion produce the following problems:

(1) Do the rules of the Treasury prohibit so as to render valueless the hands of the transferee war-savings stamps, as distinct from the certificates or pasteboards to which they are attached?

(2) If the Treasury rules are to be interpreted as going this far, is their violation criminal?

(3) If the rules do go as far as above indicated, and the intent thereof was to make their violation criminal, are such rules so interpreted within the statutory power of the Secretary of the Treasury?

First. It appears to me plain that neither of the counts in the Sacks indictment, nor the second count in the Janowitz indictment, requires the Treasury regulations to be interpreted as taking all value out of transferred stamps.

Indeed, the very allegation that the removal of a stamp constitutes counterfeiting within the counterfeiting act seems necessarily to imply a value in the thing removed.

But the first count of the Janowitz indictment plainly invokes that very wide definition of the phrase "defraud the United States" which received authoritative statement in *Haas vs. Henkel* (216

U. S., 462) and it is said (in substance) that it is a lawful function of the Treasury Department to prevent the United States  
20 being compelled, or even requested, to redeem a war-saving stamp in any other manner than for the person and in the manner preferred by the Treasury. Wherefore it was a lawful exercise of the regulatory power conferred by the statute to destroy and destroy utterly all property value in a transferred certificate, and therefore in a transferred stamp if attached thereto.

It can not be denied that such destruction of property rights is a possible exercise of congressional power: section 3477, Revised Statutes, as interpreted in *re Hudford Co.* (257 F. R., 722, and cases cited) proves this.

In my opinion, therefore, the regulation prohibiting transfer, taken in conjunction with the 14th section of circular 108, is an effort by the Secretary through departmental regulations to produce exactly the condition wrought by Congress under the section of the Revised Statutes last above referred to.

Second. If the Treasury regulations thus interpreted are reasonable, appropriate, and consistent with the act of Congress, their violation is as much a transgression of the statute as if the regulatory provision had been written in the act. This seems to me the result of United States *vs.* Morehead (243 U. S., 607) and United States *vs.* Small (236 U. S., 405).

Applying the extreme interpretation which seems necessary to sustain the first Janowitz count to the crimes averred under criminal code sections 148 and 151, it must follow that it is as much counterfeiting or forging to put a transferred stamp on a certificate as it is to detach a stamp from a certificate and thereby alter the same.

This extreme interpretation must, I think, be adopted throughout, because the regulations can not be so interpreted in one  
21 breath as to sustain a count that rests only on section 37, and then softened when the extreme holding is not necessary to sustain other counts.

Third. The preferred statement of the prosecutor in support of especially section 14 of circular 108 is that a stamp in and of itself is nothing: it has no value except as a receipt.

From this flows the assertion that when that receipt is affixed to a pasteboard which by itself has no value whatever, the two things put together become an obligation of the United States not dissimilar from a bond or a Treasury note, except that the quality of assignability or transferability is denied to it.

It is said that even if the stamp, per se worthless, may pass from hand to hand, it becomes when affixed to the certificate like the ink upon a note and its removal is as much an alteration as would be the erasure of that ink.

To me this is an ingenious but fallacious arrangement of words. To deny value to the war saving stamp is against common sense and contradictory to a course of business vigorously pursued for the last few years, which has succeeded in forcing these stamps into

the possession of people whom it is sarcasm to call "investors," and who would be surprised beyond measure to be told that their stamps had no "value."

When Congress authorized the issuance of "stamps to evidence payments for or on account of such certificates," and did not deny to the stamp holders the right of transfer, such right existed. The Treasury has sought to take it away by making the certificates non-transferable. Assuming that power exists to prohibit transfer of the certificates, I am wholly unable to perceive that there is any congressional authority for the Secretary's prohibiting the transferability of the stamps affixed to the certificates.

Nowhere is it said that any particular stamp shall evidence a payment on any particular certificate.

This I think is the gist of the matter: Is a regulation which as interpreted, in terms takes away a property right in a manner not specifically authorized by statute, a valid rule? I can not persuade myself that such is the case.

Congress has certainly not done that which was held sufficient to make a crime of rule violation in *United States vs. Grimaud*, (220 U. S. 506). The *Smull* and *Morehead* cases, *supra*, do I think hold that where the manner of obtaining a grant is committed to a department, that department may regulate the procedure to obtain the same, and if a violation of that procedure runs counter to any criminal statute of Congress, then violation of the regulation is punished by the statute, and so within the *Grimaud* case, *supra*.

But the prohibition against transfer of stamps affixed or unaffixed is far more than a procedural regulation. A stamp is a thing of value, bought and paid for, and to deprive it of the quality of assignability is a diminution of lawfully existing property rights for which in my judgment congressional action alone will suffice.

One further consideration is peculiar to the third count of the Sacks indictment.

It is not alleged that Sacks tore up or tore off a piece of pasteboard bearing stamps from a war saving certificate. It must be assumed that he did not do it, and I think it must even be assumed (in favor of innocence) that the holder and owner pursuant to Treasury regulations of the certificate from which the piece was torn, did the deed himself. The necessary implication of this third count is that such an act by the owner of the obligation constituted a violation of section 148, for only by that holding could Sacks' possession be a violation of section 151, in manner and form as alleged.

It follows, therefore, that by Treasury regulation alone an owner who destroys an obligation (for this certificate was certainly destroyed as such) violates section 148, unless he also destroys the stamps, which are just as much his after destruction of the pasteboard as they were before, unless of course the Treasury Department can diminish his property right.

That department has endeavored to diminish such property right, and indeed to destroy it utterly unless the right is exercised as per regulation. It does not seem to me that this is a method of carrying out the statute as written: it is additional and very drastic attempted legislation.

For these reasons the motion to quash is granted and the demurrer sustained.

Feb. 27, 1920.

CHAS. M. HOUGH,

U. S. C. J.

Filed Feb. 27, 1920.

24

*Order for judgment.*

At a stated term of the District Court of the United States for the Southern District of New York, for the trial of criminal causes, held at the United States courthouse and post-office building, in the Borough of Manhattan, city of New York, on the 26 day of March, 1920.

Present, Hon. Charles M. Hough, U. S. judge.

THE UNITED STATES,	}	Indictment No. 7828.
<i>vs.</i>		
PAUL SACKS.		

An indictment against Paul Sacks, the defendant above named, having been found and filed by the grand jurors of the United States in and for the Southern District of New York in the office of the clerk of the District Court of the United States for the Southern District of New York, on the 1st day of December, 1919, and thereafter the defendant above named having been arraigned moved to quash said indictment on the ground that upon the ground that the construction of the statutes of the United States, to wit, section 6 of the act of Congress of September 24, 1917, and as amended by the act of Congress of September 24, 1918, and sections 148 and 151 of the Criminal Code of the United States, the defendant cannot be guilty of crime.

Now on motion of Joseph H. Seidman, Esq., attorney for defendant, it is hereby

Ordered and adjudged that the indictment herein is quashed, set aside, and declared to be null and void because the indictment is not authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of September 24, 1917, section 6 thereof, and the act of Congress of September 24, 1918, section 2 thereof, and sections 148 and 151 of the Criminal Code of the United States, or under the construction of any other statute of the United States now in force, and it is further ordered that judgment be entered accordingly.

C. M. HOUGH,

*United States Circuit Judge.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 26, 1920.

26

*Judgment.*

United States District Court, Southern District of New York.

THE UNITED STATES  
*vs.*  
 PAUL SACKS.

Indictment No. 7828.

An indictment against Paul Sacks, the defendant above named, having been found and filed by the grand jurors of the United States in and for the Southern District of New York, in the office of the clerk of the district court of the United States for the Southern District of New York, on the 1st day of December, 1919, and thereafter the defendant above named, having been arraigned, moved to quash said indictment upon the ground that the construction of the statutes of the United States, to wit, section 6 of the act of Congress of September 24, 1917, and as amended by the act of Congress of September, 24, 1918, and sections 148 and 151 of the Criminal Code of the United States, the defendant cannot be guilty of crime.

Now, on motion of Joseph H. Seidman, attorney for defendant, it is hereby—

Ordered and adjudged that the indictment herein is quashed, set aside, and declared to be null and void because the indictment is not authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of September 24, 1917, and section 6, and as amended by the act of Congress of September 24, 1918, section 2 thereof, and sections 148 and 151 of the Criminal Code of the United States, or under the construction of any other statute of the United States now in force.

27 Judgment entered this 26th day of March, 1920.

ALEX. GILCHRIST, JR.,

*Clerk of the District Court of the United States  
 for the Southern District of New York.*

(Endorsed:) U. S. District Court, S. D. of N. Y., filed Mar. 26, 1920.

28 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA  
*v.*  
 PAUL SACKS.

*Assignments of error.*

The United States of America, in connection with its petition for a writ of error, make the following assignments of error which they



allege occurred in the decision of the court herein in quashing the indictment herein, to wit:

(1) The court erred in quashing the indictment herein.

(2) The court erred in quashing the first count of the indictment herein.

(3) The court erred in quashing the second count of the indictment herein.

(4) The court erred in quashing the third count of the indictment herein.

(5) The court erred in holding as it did in quashing the indictment herein that the facts averred in the first count of the indictment did not constitute a violation of section 148 of the United States Criminal Code.

(6) The court erred in holding as it did in quashing the indictment herein that the facts averred in the second count of the indictment did not constitute a violation of section 148 of the United States Criminal Code.

(7) The court erred in holding as it did in quashing the indictment herein that the facts averred in the third count of the indictment did not constitute a violation of section 151 of the United States Criminal Code.

29 (8) The court erred in holding as it did in quashing the indictment herein that by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof, the Secretary of the Treasury of the United States was not empowered and authorized to make a rule and regulation governing the sale of war savings certificates of the United States providing that war savings certificates of the United States should be nontransferable and should be of no value to anyone save the owner thereof whose name had been written thereon at the time of the issue thereof.

(9) The court erred in holding as it did in quashing the indictment herein that the promulgation of a rule and regulation by the Secretary of the Treasury governing the sale of war savings certificates of the United States, by which the Secretary of the Treasury provided that war savings certificates of the United States should be nontransferable and of no value to any person save the owner whose names had been thereon written at the time of the issue of such certificate was not a lawful exercise of authority conferred upon him by section 6 of the act of Congress of September 24, 1917, and by section 2 of the act of Congress of September 24, 1918.

(10) The court erred in holding as it did in quashing the indictment herein that the prescribing by the Secretary of the Treasury of a term and condition of the sale of war savings certificates of the United States by which it was provided that war savings certificates of the United States should be nontransferable and should be of no value to any person save the owner named thereon and was not a lawful exercise of authority conferred upon him by section 6 of the

act of Congress of September 24, 1917, and by section 2 of the act of Congress of September 24, 1918.

30 (11) The court erred in holding as it did in quashing the indictment herein that the promulgation by the Secretary of the Treasury of a rule and regulation governing the sale of war savings certificates of the United States by which it was provided that the name of the owner of each war savings certificate of the United States should be written upon each certificate at the time of the issue thereof was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof.

(12) The court erred in holding as it did in quashing the indictment herein that the prescribing by the Secretary of the Treasury of a term and condition of the sale of war savings certificates of the United States by which it was required that the name of the owner of each war savings certificate of the United States be written upon each certificate at the time of the issue of such certificate was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof.

(13) The court erred in holding as it did in quashing the indictment herein that the act of Congress of September 24, 1917, section 6 thereof, and the act of Congress of September 24, 1918, section 2 thereof, did not confer upon the Secretary of the Treasury of the United States authority to promulgate as a rule and regulation of the sale of war savings certificates of the United States to the effect that the name of the owner of each war savings certificate of the United States be written upon each war savings certificate of the United States at the time of the issue thereof.

31 (14) The court erred in holding as it did in quashing the indictment herein that the act of Congress of September 24, 1917, section 6 thereof, and the act of Congress of September 24, 1918, section 2 thereof, did not confer upon the Secretary of the Treasury of the United States authority to prescribe as a term and condition of the sale of war savings certificates of the United States that the name of the owner of each war savings certificate of the United States at the time of the issue of such certificate.

(15) The court erred in holding as it did in quashing the indictment herein that the promulgation by the Secretary of the Treasury of the United States of a rule and regulation by which it was provided that war savings certificates could be redeemed at or prior to maturity by no person save the owner whose name had thereupon been written at the time of the issue of the said certificate was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof.

(16) The court erred in holding as it did in quashing the indictment herein that the prescribing by the Secretary of the Treasury

of the United States of a term and condition of sale of war savings certificates of the United States by which it was provided that war savings certificates could be redeemed prior to maturity by no person save the owner whose name had thereupon been written at the time of the issue of the said certificate was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1918, section 2 thereof.

32 (17) The court erred in holding as it did in quashing the indictment herein that the act of Congress of September 24, 1917, section 6 thereof, and the act of Congress of September 24, 1918, section 2 thereof, did not confer upon the Secretary of the Treasury of the United States power and authority to promulgate as a rule and regulation of the sale of war savings certificates of the United States to the effect that war savings certificates could be redeemed prior to maturity by no person save the owner whose name had thereupon been written at the time of the issue of the said certificate.

(18) The court erred in holding as it did in quashing the indictment herein that the act of Congress of September 24, 1917, section 6 thereof, and the act of Congress of September 24, 1918, section 2 thereof, did not confer upon the Secretary of the Treasury of the United States authority to prescribe as a term and condition of the sale of war savings certificates of the United States that war savings certificates could be redeemed at or prior to maturity by no person save the owner thereof and by a person whose name had thereupon been written at the time of the issue of the said certificate.

(19) The court erred in holding as it did in quashing the indictment herein that the promulgation by the Secretary of the Treasury of a rule and regulation governing the sale of war savings certificates of the United States and the prescription by him of a term and condition of the sale thereof to the effect that a war savings certificate stamp of the United States affixed by an owner of a war savings certificate to such a certificate became by

33 such affixing an irremovable portion of an indissoluble obligation of the United States, was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof.

(20) The court erred in holding as it did in quashing the indictment herein that the Secretary of the Treasury of the United States did not have authority under the act of Congress of September 24, 1917, section 6 thereof, and under the act of Congress of September 24, 1918, section 2 thereof, to promulgate a rule and regulation governing the sale of, and to prescribe a term and condition of the sale of war savings certificates of the United States to the effect that war savings certificate stamps of the United States should have no redeemable value unless attached to a war savings certificate of the United States owned by a person whose name had been written on such certificate at the time of the issue of such certificate.

(21) The court erred in holding as it did in quashing the indictment herein that the tearing of a war savings certificate stamp of the United States from a war savings certificate of the United States did not constitute an alteration of an obligation of the United States within the meaning of section 148 of the United States Criminal Code.

(22) The court erred in holding as it did in quashing the indictment herein that a war savings certificate of the United States from which war savings certificate stamps of the United States had been torn was not an altered obligation of the United States within the meaning of section 151 of the United States Criminal Code.

(23) The court erred in holding as it did in quashing the indictment herein that the Secretary of the Treasury of the United States was not empowered by the act of Congress of September 24, 1917,

section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof, to prescribe regulations governing, and terms and conditions of, the sale of war savings certificates of the United States to the effect that after a war savings certificate stamp of the United States had been affixed to a war savings certificate of the United States by an owner of such certificate, the said stamps could not be detached from such certificate by a person other than the said owner without the loss of the right to attach such stamps to a different war savings certificate not belonging to the owner of the certificate first mentioned and make the latter certificate an obligation of the United States.

(24) The court erred in holding as it did in quashing the indictment herein that the Secretary of the Treasury of the United States was not authorized by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof, to make nontransferable a war savings certificate stamp of the United States after it had been attached to a war savings certificate of the United States by the owner of such certificate.

The United States aforesaid, plaintiff in error, prays that the decision aforesaid and the order entered thereon for the errors aforesaid in the record and proceeding herein may be reversed and altogether held for nothing and that the plaintiff in error may be restored to all things which it has lost by reason of said decision and order and that the district court of the United States be directed to vacate and set aside said order and to compel the defendant in error to plead to the indictment herein and for such other and further relief as to the court may seem proper.

Dated: New York, March 25, 1920.

FRANCIS G. CAFFEY,

*United States Attorney for the Southern District of New York.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 27, 1920.

*Petition for writ of error.*

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA	} Petition for writ of error.
<i>vs.</i>	
PAUL SACKS.	

Now comes United States of America, by its attorney, Francis G. Caffey, United States attorney for the Southern District of New York, and complains that in the record and proceeding had in this cause and in the judgment quashing the said indictment, a manifest error hath happened, as well appears from the assignments of error herewith submitted. The United States of America prays for the allowance of a writ of error and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated: New York, N. Y., March 27, 1920.

FRANCIS G. CAFFEY,  
*United States Attorney for the Southern District of New York,*  
*Attorney for Petitioner.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 27, 1920.

36 By the Honorable Learned Hand, one of the judges of the District Court of the United States for the Southern District of New York.

To: Paul Sacks, defendant in error.

Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol, in the city of Washington, in the District of Columbia, on the 26th day of April, 1920, pursuant to a writ of error filed in the office of the Clerk of the District Court of the United States for the Southern District of New York, wherein the United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the city of New York, Southern District of New York, this 27th day of March, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fourth.

[SEAL.]

LEARNED HAND,  
*Judge of the District Court of the United States*  
*for the Southern District of New York.*

(Endorsed:) C. U.-251. U. S. District Court, Southern District of New York. The United States, plaintiff in error, versus Paul

Sacks, defendant in error. Citation. Francis G. Caffey, United States Attorney, attorney for plff. in error. Due service of a copy of the within is hereby admitted. New York, March 24, 1920. U. S. District Court, S. D. of N. Y. Filed Mar. 29, 1920. A copy of within received this Mar. 27, 1920. J. A. Seidman, attorney for Paul Sacks.

(Endorsed on cover:) File No. 27672. S. New York, D. C. U. S. Term No. 330. The United States of America, plaintiff in error, vs. Paul Sacks. Filed May 10th, 1920. File No. 27672.



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JAMES D. MAHER  
CLERK

No. **48**

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*In the Supreme Court of the United States.*

OCTOBER TERM, 1920.

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THE UNITED STATES OF AMERICA, PLAINTIFF IN  
ERROR,

v.

PAUL SACKS.

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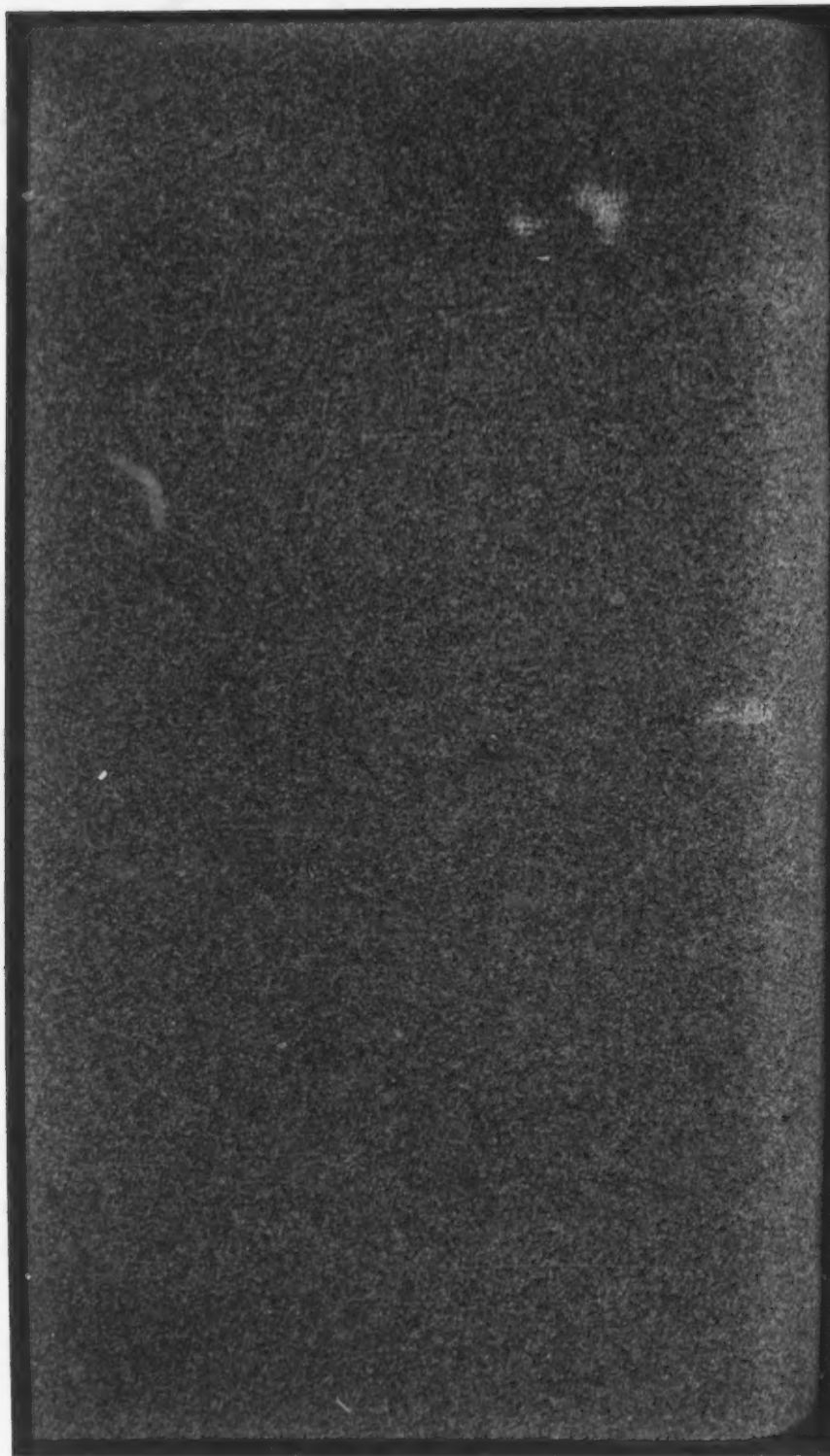
IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

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BRIEF ON BEHALF OF THE UNITED STATES.

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WASHINGTON : GOVERNMENT PRINTING OFFICE : 1921





# In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA, PLAINTIFF tiff in error, v. PAUL SACKS.	}	No. 330.
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*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.*

## BRIEF ON BEHALF OF THE UNITED STATES.

### STATEMENT OF CASE.

The defendant in error, hereinafter called the defendant, was indicted in the Southern District of New York on three counts. (R. 1-11.) The first two counts charged a violation of section 148 of the Criminal Code of the United States in that the defendant, with intent to defraud, did alter an obligation of the United States, to wit, a war-savings certificate of the United States, specifically described in the counts, of which a copy was attached as an exhibit to the counts. The third count charged a violation of section 151 of the Criminal Code of the United States in that the defendant, with intent to defraud, did have in his possession an altered

obligation of the United States, to wit, a portion of a war-savings certificate of the United States of the series of 1918, with three war-savings stamps thereto attached, with intent to sell the same; and that the said obligation of the United States was altered in that the portion thereof which the defendant had in his possession had been torn from a whole war-savings certificate. A copy of the altered obligation in question was attached as an exhibit to the count.

A motion to quash the indictment was granted, and a demurrer thereto sustained (R. 11-10), "because the indictment is not authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of September 24, 1917, section 6, and as amended by the act of Congress of September 24, 1918, section 2 thereof, and sections 148 and 151 of the Criminal Code of the United States, or under the construction of any other statute of the United States now in force." (R. 19.)

The District Judge rendered only one opinion to cover both the case at bar and the case of *United States v. Herman Janowitz et al.*, No. 331, on the docket of the October term, 1920, of this court.

Whereupon this writ of error was allowed under the provisions of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246.

## ARGUMENT.

(a) In so far as the first and second counts of the indictment in the case at bar are concerned, it is not believed that anything more need be said than is contained in the brief on behalf of the United States in the aforesaid case of *United States v. Herman Janowitz et al.*, No. 331, on the docket of the October term, 1920, of this court. The second count in the Janowitz case charged a conspiracy to violate section 148 of the Criminal Code, while the first two counts in the case at bar merely charge a substantive violation of said section 148. This court, of course, will take judicial notice of the regulations issued by the Secretary of the Treasury relative to the issuance and redemption of war savings certificates and stamps (*Caha v. United States*, 152 U. S. 211, 221, 222), and, as argued in the brief on behalf of the Government in the Janowitz case, those regulations properly interpreted and enforced make the war savings certificate with the stamp attached thereto the obligation of the United States, and therefore to remove the stamp from the certificate is necessarily to alter said obligation.

(b) In so far as the third count is concerned, this also seems to be covered by the argument on behalf of the United States in the Janowitz case, and the District Judge treated the matter in this way. If the obligation of the United States, within the meaning of section 151 of the Criminal Code, was the complete war savings certificate with a stamp or stamps thereto

attached, and if the defendant had in his possession such a paper as Exhibit C which consists of that part of a war-savings certificate having stamps attached thereto which does not contain the name of the owner or the receipt to be executed by the owner when the certificate is redeemed, then he had in his possession an altered obligation of the United States, within the meaning of section 151 of the Criminal Code, and the third count expressly alleges that he had this possession, with intent to defraud the United States, and with intent to pass and sell the altered obligation in question.

**CONCLUSION.**

The judgment of the District Court should be reversed and the case remanded with instructions to deny the motion and overrule the demurrer.

ROBERT P. STEWART,  
*Assistant Attorney General.*

WILLIAM C. HERRON,  
*Attorney.*





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IN THE  
Supreme Court of the United States.

OCTOBER TERM, 1920—No. 340. 48

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THE UNITED STATES OF AMERICA,

*Plaintiff-in-Error,*

—against—

PAUL SACKS,

*Defendant-in-Error.*

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In Error to the District Court of the United States for the  
Southern District of New York.

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BRIEF ON BEHALF OF PAUL SACKS,  
DEFENDANT-IN-ERROR.

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JOSEPH A. SEIDMAN,  
*Attorney for Defendant in Error.*

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NOTE.—All matter quoted and printed in italics ours.

IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1920—No. 330.

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THE UNITED STATES OF AMERICA,  
*Plaintiff-in-Error,*

--against--

PAUL SACKS,  
*Defendant-in-Error.*

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In Error to the District Court of the United States for the  
Southern District of New York.

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BRIEF ON BEHALF OF PAUL SACKS,  
DEFENDANT-IN-ERROR.

The defendant in error, hereinafter called defendant, was indicted in the Southern District of New York on three counts (R. 11).

When called for trial said indictment was on defendant's motion quashed on the ground that upon proper construction of Section 6 of the Act of Congress of September 24, 1917, as amended, and Sections 148 and 151 of the Criminal Code of the United States, the defendant cannot be guilty of crime (R. 18).

The first two counts of the indictment are alike in character differing only in names appearing on war-savings certificate attached to indict-

ment, and in each of these counts the defendant is charged that he

"did, with intent to defraud, alter an obligation of the United States, to wit, a War Savings Certificate of the United States of the Series of 1918 \* \* \* in that the said defendant did then and there tear from the face of said War Savings Certificate two War Savings Certificate Stamps of the United States of the Series of 1918, thereto before attached."

The alleged obligation of the United States referred to in said indictment is thereto attached marked respectively Exhibits 'A' and 'B' and it is further charged that the act complained of, namely, the alteration, was in violation of Section 148 of the United States Criminal Code, reading as follows:

"Whoever, with intent to defraud, shall falsely make, forge, counterfeit or alter any obligation or other security of the United States, shall be fined not more than Five thousand dollars and imprisoned not more than fifteen years."

The third count charges the defendant with keeping in his possession

"with intent to defraud the United States and with intent to pass and sell the same, an altered obligation of the United States, to wit, a portion of a War Savings Certificate of the United States of the Series of 1918 with three War Savings Stamps

thereto attached; that the said obligation of the United States was altered in that portion thereof, which the defendant did have and keep in his possession, had been torn from a whole War Savings Certificate; that the altered obligation of the United States which the defendant did have and keep in his possession is marked Exhibit 'C' attached hereto and made part of this indictment."

It is charged that these acts were in violation of Section 151 of the United States Criminal Code, reading as follows:

"Whoever, with intent to *defraud*, shall *pass*, utter, publish or *sell* or *attempt to pass*, utter, publish or *sell*, or shall bring into the United States or any place subject to the jurisdiction thereof, with *intent to pass*, publish, utter or *sell*, or shall *keep in possession* or concealed with like intent, any falsely made, forged, counterfeited or *altered obligation* or other security of the United States, shall be fined not more than Five thousand dollars and imprisoned not more than fifteen years."

The words "obligation or other security of the United States" are defined by Section 147 of the United States Criminal Code as follows:

"The words 'obligation or other security of the United States' shall be held to mean all bonds, certificates of indebtedness, national bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or

drafts for money, drawn by or upon authorized officers of the United States, stamps and *other representatives of value*, of whatever denomination, which have been or may be issued under any act of Congress.'

The heading to Section 151 of the said Criminal Code is:

**"UTTERING FORGED OBLIGATIONS."**

The heading to Section 154 of the United States Criminal Code is:

**"DEALING IN COUNTERFEIT SECURITIES."**

Section 154 of the Criminal Code reads as follows:

"Whoever shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeited or altered obligation or other security of the United States, \*  
\* \* with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than Five thousand Dollars or imprisoned not more than ten years, or both."

The Act of Congress, September 24th, 1917 (Chap. 56, Section 40 Stat. 291, Section 6829 l. of U. S. Compiled Statutes, 1918) reads as follows:

"In addition to the bonds authorized by Section 1 of this Act and the certificate of indebtedness authorized by Section 5

of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, *War Savings Certificates* of the United States on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such War Saving Certificates shall be in such form or forms and subject to such terms and conditions, and may have such provisions for the payment thereof before maturity, as the Secretary of the Treasury may prescribe. Each War Saving Certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity and upon such terms and conditions as the Secretary of the Treasury may prescribe. The sum of such War Saving Certificates outstanding shall not at any one time exceed in the aggregate two billion. The amount of War Saving Certificates sold to any one person at any one time shall not exceed one hundred dollars and it shall not be lawful for any one person at any one time to hold War Saving Certificates to an aggregate amount exceeding one thousand dollars. The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue or cause to be issued, stamps to evidence payment for or on account of such certificates."

The Secretary of the Treasury issued:

A. Cards in the form of Exhibits "A" and "B" named by him "United States of America War Savings Certificate," upon which, among other things, he caused to be printed:

### CERTIFICATE

This certifies that, subject to the terms and conditions printed hereon, the owner named on the back hereof will be entitled to receive on January 1, 1923, in respect of each United States War Savings Certificate Stamp of the Series of 1918 then affixed hereto, the amount indicated thereon as then payable, or, at his option, will be entitled to receive at any earlier date, in respect of each such Stamp then affixed hereto, the lesser amount indicated in the Table printed hereon.  
January 2, 1918.

(Signed) W. G. McAdoo,  
Secretary of Treasury.

### TERMS AND CONDITIONS

1. This certificate is not a valid obligation unless a United States War-Savings Certificate Stamp of the Series of 1918 is affixed hereto.
2. This certificate is of no value except to the owner named hereon, and is not transferable.
3. Not more than twenty United States War-Savings Certificate Stamps, and only such Stamps of the Series of 1918, may be affixed hereto.



(4 and 5 irrelevant to this issue)

6. The law provides that no one person shall at any one time hold War-Savings Certificates to an aggregate amount exceeding One Thousand Dollars."

B. Stamps in the form of the stamps on Exhibit "C" contained printed words as follows:

"United States War Savings Certificate Stamp, when affixed to a certificate 5 Dollars will be payable January 1, 1923."

### ***Questions Involved.***

1. Is the card called "War Savings Certificate" without a "War Savings Certificate Stamp" an obligation of the United States?

2. Is a "War Savings Certificate Stamp" not affixed to a card called "War Savings Certificate" an obligation of the United States?

3. Is the act of detaching the stamp from the "certificate" not changing the form of the obligation as to the amount payable, the time of payment, or the name of the payee, an alteration within the meaning of the Counterfeiting Statute?

4. Has Congress or the Secretary of the Treasury created any restriction preventing the free

transfer and disposition of the "War Savings Certificate Stamp" after its sale by the Treasury Department?

5. Are the acts described in the indictment offenses or crimes and the subject of criminal prosecution under Sections 148 and 151 of the United States Criminal Code?

## ARGUMENT.

### I.

**The allegations contained in the various counts of the indictment are insufficient to charge the defendant with the commission of a substantive offense.**

To constitute an offense or crime and be the subject of criminal prosecution in a Federal court there must be some proof of the commission of some act or the omission of some duty which is in violation of a public law of the United States, either prohibiting or commanding it.

*Todd v. United States*, 158 U. S. 278;  
*United States v. Hudson*, 7 Cranch, 32;  
*United States v. Cooledge*, 1 Wheat,  
 145.

The counterfeiting statutes were designed to suppress an evil—the counterfeiting of currency by imitation or alteration detrimental to the interest of the Government. Its primary purpose was to prevent the utterance and passing of spurious bills, bonds or stamps, and the alteration of genuine documents by changing the form of the obligation—by changing a one dollar bill to a ten dollar bill, or a bond for \$100 to \$1,000, and alterations of like character. It was not the purpose of Congress to control the action of those in lawful possession of genuine Government obligations so as to prohibit destruction of such obligations by the owner.

The Attorney General insists that the Court should take into consideration what was in the mind of the Secretary of the Treasury when he promulgated the rules and prescribed the terms and conditions printed on the card described as "War Savings Certificate," which came into existence many years after the enactment of the counterfeiting statute; he insists that the rules so promulgated be read into the counterfeiting statute so as to make criminal the commission of an act amounting to a destruction of a govern-

ment obligation, when the act effecting its destruction is committed by the lawful owner thereof.

Mr. Judge Hough, following settled rules of law declared by this Court in numerous cases involving the construction of penal statutes, refused to declare in favor of constructive offenses and held that the counterfeit statutes are not to be extended by construction so as to cover this case, where it is admitted that the defendant did not come into possession of the cards or stamps without the consent or permission of the person or persons who acquired good title thereto and paid full consideration therefor to the United States Government.

*In United States v. Chase* (135 U. S. 255, 261)

Mr. Justice Lamar, speaking for a unanimous Court, said:

"We recognize the value of the rule construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of the language in them which is ambiguous and equally susceptible of conflicting constructions. But this Court has repeatedly held that this rule does not apply to instances which are not embraced in the language employed in the statute, or implied from a fair interpretation of its contents, even though they may involve the same mischief which the statute was designed to suppress."

In *U. S. v. Clayton*, 2 Dill., 219, Fed. Cas. No. 14,814, Judge Dillon said:

*"The principle that the legislative intent is to be found, if possible, in the enactment itself, and that the statutes are not to be extended by construction to cases not fairly and clearly in their terms is one of great importance to the citizen. The courts have no power to create offenses, but, if by a latitudinarian construction, they construe cases not provided for to be within legislative enactments, it is manifest that the safety and liberty of the citizen are put in peril, and that the legislative domain had been invaded. Of course, an enactment is not to be frittered away by forced construction, by metaphysical niceties, of mere verbal and sharp criticism. Nevertheless, the doctrine is fundamental in English and American law that there can be no constructive offenses, that before a man can be punished his case must be plainly within the statute, and if there be any fair doubt whether the statute embraces it, that doubt is to be resolved in favor of the accused. These principles of law admit of no dispute, and have been often declared by the highest courts, and by no tribunal more clearly than the Supreme Court of the U. S. *U. S. v. Morris*, 14 Pet. (39 U. S.) 464; *U. S. v. Wiltberger*, 5 Wheat. (18 U. S.) 76; *U. S. v. Sheldon*, 2 Wheat. (15 U. S.) 119."*

In *U. S. v. Wiltberger*, 5 Wheat., 76, 95, 96, it was said by Chief Justice Marshall:

*"The rule that penal laws are to be construed strictly is perhaps not much less*

old than construction itself. \* \* \* to determine that a case is within the intention of the statute, its language must authorize us to say so. It would be dangerous indeed, to carry the principle that a case which is within the reason or mischief of the statute is within its provisions so far as to punish a crime not enumerated in the statute, because it is of equal atrocity or of kindred character with those which are enumerated."

In *France v. U. S.*, 164 U. S., 676, it is said:

"The statute does not cover the transaction, and however reprehensible the plaintiffs in error may be thought to be, we cannot sustain a conviction on that ground. Although the objection is a narrow one, yet the statute being highly penal, rendering its violator liable to fine and imprisonment, we are compelled to construe it strictly \* \* \* if it be urged that the act of these plaintiffs in error is within the reason of the statute, the answer must be that it is so far outside of its language that to include it within the statute would be to legislate, and not to construe legislation."

See also:

*United States v. Salen*, 235 U. S. 237.

It is elementary that there can be no conviction upon proof of mere general malice or criminal intent, but that to sustain a conviction the indictment must allege, and there must be some evidence to prove, an intent to accomplish

a particular purpose. There is nothing in the indictment to show the purpose intended to be accomplished. The United States received full value for the stamps; its liability thereon was fixed when the stamp came into defendant's possession; the government's liability, if any, remained the same no matter how many times the stamp changed hands; the owner of the stamp could affix it to or remove it from the card without changing the obligation of the United States. The rights of the United States were in no wise prejudiced. The definition to be given the word "alteration" is no different in the case of a Government obligation than the alteration of a private obligation. If the alteration does not prejudice the rights of the obligor, the act of alteration will not constitute a ~~crime~~<sup>crime</sup> at common law.

*People v. Cady*, 6 Hill (N. Y.) 490;  
*People v. Shall*, 9 Cow. (N. Y.) 778;  
*People v. Harrison*, 8 Barb. (N. Y.)  
 560.

The word "alter" as used in the counterfeiting statute means an act causing a change in the form of the obligation without destroying its

identity. It does not mean its total destruction. In other words, in order to make the alteration of a War Savings Certificate an offense within the meaning of the statute, the certificate as altered must retain the character and form of an obligation of the United States changed only as to the government's liability thereon, or as to the time for the payment thereof, as in the case of the alteration of any written instrument. A dollar bill, when cut to pieces, is not an altered obligation of the United States and one would not be guilty of altering government bonds by the complete obliteration of all words printed thereon. The obliteration of the words creating the obligation effects the complete destruction of the instrument and changes it to a mere piece of paper.

"Nothing which ceases to exist can, in any proper sense, be said to be altered. If it is altered, it has merely changed its form or nature, but still has existence."

*Haynes v. State*, 15 Ohio State Rep.  
455, 458.

and see to the same effect

*Hannibal v. Winchel*, 54 Mo. 172, 177;  
*Waddell v. New York*, 8 Barb. (N. Y.)  
95, 96.

*Commonwealth v. Hayward*  
10 Mass. 34.



In *Davis v. Campbell* (93 Iowa, 524, 530), citing Black Law Dictionary, alteration is defined to be an act upon a written instrument, which without destroying its identity, changes its language and meaning. In another case it has been said:

"An alteration of an instrument is something by which its meaning or language is changed, either in a material or an immaterial part. If what is written upon or erased from the paper containing the instrument, have no tendency to produce this result or to mislead any person, it cannot be said to be an alteration" (*Morvil v. Otis*, 12 N. H. 466, 472).

As stated by Mr. Judge C. M. Hough in his opinion and as was conceded upon the argument, that which is called a War Savings Certificate is a mere piece of pasteboard of no value whatsoever. These certificates are freely distributed upon the purchase of one War Savings Stamp.

The Treasury Department Circular 94 declares that a War Savings Certificate of the Series of 1918 "will be an obligation of the United States when and only when" at least one stamp is affixed thereto; but the Secretary of the Treasury "offers for sale" War Savings Certificates, payments for or on account of which "must be

evidenced by" stamps which "are to be affixed thereto." It is declared that no certificate will be issued unless at least one stamp shall at the same time be purchased and affixed thereto, but "no additional charge" is made for the certificate itself. It is required that the name of the owner of each certificate must be written thereupon "at the time of the issue thereof." It is then declared that "War Savings Certificates are not transferable and will be payable only to the respective owners' names thereon."

Circular 108 which is formally entitled as Treasury Regulations also provides that if any person receive certificates in excess of an aggregate of one thousand dollars maturity value in an unlawful manner, the excess amount shall be immediately surrendered at a money order post-office and be paid for at their then value: but "in any other case if it shall appear at the time a certificate is presented for payment that the person presenting the same holds certificates of an aggregate amount exceeding one thousand dollars maturity value, the post-master shall refuse payment of all certificates in excess of such

amount and shall demand surrender of the certificates held by such owner until the holdings of such owner are reduced to one thousand dollars maturity value."

Assuming, without conceding, that the Secretary of the Treasury was authorized by Congress to annex these terms and conditions to the sale and disposition of War Savings Certificates and War Savings Certificate Stamps, the destruction of either one of the certificates would not constitute an act amounting to the alteration of an obligation of the United States because the piece of pasteboard called "War Savings Certificate" in itself creates no obligation without the stamp being attached thereto, and again, the War Savings Certificate Stamp itself without being attached to the Certificate would not under these terms and conditions amount to an obligation of the United States. So that, if it be assumed that the defendant did tear the stamps from the Certificate and retained the possession of the stamps without the Certificate, it could not be said that this act alone was an offense under the counterfeiting statute. By tearing the Certificate if it was an obligation

of the United States, the defendant merely accomplished its complete destruction and so by removing the stamp from the Certificate he also accomplished nothing less than a complete destruction of the obligation.

To construe this enabling statute as a delegation of power to legislate, would be contrary to the express provisions of the Constitution. In effect such a construction would vest in the Secretary of the Treasury a power to create regulations in the nature of an amendment to the statute authorizing the issue of the stamps and certificates under consideration. To sustain the contentions of the Attorney General this Court must overrule its prior decisions in *Morril v. Jones*, 106 U. S. 266; *U. S. v Williamson*, 207 U. S. 425, and other cases.

## II.

In the absence of express language in the Statute which authorized the issue of War Savings Certificates and War Savings Certificate Stamps, prohibiting the free transfer and disposition of certificates and stamps, the Treasury Department was without power to impose restrictions upon the transfer of either certificates or stamps.

In *Adams v. Church* (193 U. S. 510) it was contended that under the Timber Culture Act (Section 2, Stat. at Large 113, Chap. 190) the provisions of that law enacted that a public policy to grant the lands in question to the person filing the entry, his heirs and legal representatives and none other, and that therefore a sale of an interest in the lands to another as partner was void as against public policy. Mr. Justice Day delivered the opinion of this Court and after referring to these contentions and to the statute and the Homestead Act (U. S. Revised Stat. Section 2290) said:

"But this case is very far from supporting the contention of the plaintiff in error as to the construction of the timber

culture act. There is no requirement in the latter act that the entryman shall make oath that he has not alienated any interest in the land. The policy of the government to require such affidavit when it intends to make it a condition precedent to granting a title was indicated in the homestead act, and could readily have been pursued by a similar provision in the timber culture act if it was intended to extend the principle to that statute. The final proof under the latter act has in view sworn testimony that the number of trees required has been planted and the prairies theretofore barren of timber have been supplied with trees to the extent required by the law before the title shall pass from the government. \* \* \*

But as the law does not require affidavit before final certificate that no interest in the land has been sold, we perceive no reason why such contract as was found to exist by the Supreme Court of Oregon would vitiate the agreement to convey after the certificate is granted and the patent issued. \* \* \* Had Congress intended such result to follow from the alienation of an interest after entry in good faith, it would have so declared in the law (citing *Myers v. Craft*, 13 Wall. 281, 20 L. Ed. 562).

To sustain the contentions of the plaintiff in error would be to incorporate, by judicial decision, a prohibition against the alienation of an interest in the lands, not found in the statute or required by the policy of the law upon the subject."

And so in the case at bar, by the act of Congress of September 24th, 1917 (Sec. 6) the Secretary of the Treasury is authorized to borrow

from time to time, on the credit of the United States "such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, War Savings Certificates of the United States on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe." It also authorized the Secretary of the Treasury "under such regulations and upon such terms and conditions as he may prescribe issue or cause to be issued stamps to evidence payment for on account of such certificates."

But it does not expressly authorize the Secretary of the Treasury to restrain the alienation of either certificates or stamps. The power to restrain alienation is not to be presumed or implied. The right of alienation is inherent as an incident to or an attribute to the ownership of the property (*Fletcher v. Peck*, 6 Cranch 87; *Bronson v. Bush*, 251 U. S. 182, 187). There is no question but that the stamp for which the government receives payment is property, and as such, is transferable at the will of the owner.

The terms and conditions which the Secretary of the Treasury was authorized to impose were only such terms and conditions as related to the mode and manner of payment, the form of the obligation, and as to date of maturity. The only restriction, if it can be called a restriction, authorized by the act is that which is expressly stated therein, namely, that it shall be unlawful for any one person to own and hold at any time War Savings Certificates of one series in an amount in excess of one thousand dollars.

Assume that the condition imposed by the Secretary of the Treasury that the War Savings Certificate is to be payable only to the owner and that it is not transferable is part of the contract, that alone would not prevent the lawful owner from transferring his right, title and interest therein. During the war and since the government encouraged private agencies to increase the sale of War Savings Stamps. Stamps without limit were delivered to them upon payment of par for the purpose of having the same sold to others, so that the right to transfer stamps was fully recognized. Peter B. Ballas and Ethel C. Hickox, who it is alleged in the



indictment were at one time the lawful owners of the Certificates, by the transfer of the same to the defendant, conferred upon him an implied, if not an express, power to sign their respective names to the certificates so as to enable the defendant as transferer to obtain payment thereon, and even if it be assumed that such authority is not to be implied from the mere transfer the defendant would have a right to compel his transferers to present the same for payment and to turn over to him the proceeds collected thereon.

*Portuguese Am. Bank v. Welles*, 242 U. S. 7;

*Hobbs v. McLean*, 117 U. S. 567;

*Burck v. Taylor*, 152 U. S. 632;

*Hackett v. Campbell*, 10 N. Y. App.

Div. 523, affirmed 159 N. Y. 537;

*Fortunato v. Patten*, 147 N. Y. 277.

Judge Hough's reasoning that a right *ex-contractu* against the United States must necessarily be freely assignable is absolutely sound, notwithstanding the argument of the Attorney General to the contrary.

It is true that the Act of February 26th, 1853, Chap. 81, 10 Stat. 170 and Section 3477 U. S.

Revised Statutes, forbid the assignment of claims against the United States except upon compliance with certain formalities after warrant issued, but these statutes relate to unliquidated claims and the assignment is expressly prohibited by acts of Congress. Congress by these statutes intended to prevent bribery by the assignment of a share or interest in government contracts to government officials or employees for the purpose of obtaining a favorable adjustment of unliquidated claims.

Here, however, the Attorney General insists that a restraint of alienation is to be implied although not expressly provided for in the act itself.

Indeed, the condition imposed by the Secretary of the Treasury is absurd. The sale of War Savings Stamps is unrestricted—the person acquiring the same may affix them, if he so desires, or he may accumulate as many stamps as he may wish to accumulate and, at will, affix the same to cards and present the same for payment, and yet it is to be assumed that notwithstanding that right and power the owner may become guilty of a crime of counterfeiting

by detaching from said card one or more stamps and affix the same to another or different card. If the owner may do so without being guilty of the crime of counterfeiting, anyone acquiring the stamps from him may do so without being guilty of altering an obligation of the United States.

### III.

**The Court properly dismissed the indictment because it is defective in form, because of duplicity and for the reason that it is vague and indefinite.**

The indictment does not inform the defendant whether the crime charged is based on the supposition that he was dealing in altered obligations of the United States and that he was in possession thereof with intent to pass the same as true and genuine, or whether the crime charged is the uttering of a forged or altered obligation by having possession of such document with intent to pass and sell the same as altered or counterfeit. The two acts are separate and distinct and con-

stitute different and distinct crimes. The indictment is therefore faulty.

*Brewing Co. v. U. S.*, 204 Fed. Rep.  
17;

*Ammerman v. U. S.*, 216 Fed. Rep.  
326.

An indictment under the counterfeiting statute must show (1) that the instrument was an obligation of the United States before its form was changed or altered; (2) that the alteration effected a change in the form of the obligation; (3) that the person altering or changing the form of the instrument knew it to be an obligation of the United States; (4) and when a person is charged with the possession of an altered obligation of the United States, it must also be alleged in the indictment and proven on the trial that the defendant knew it to be an altered obligation of the United States.

None of these facts are alleged in the indictment. The allegations contained in the indictment that an obligation of the United States was altered or that the defendant was in possession of an altered obligation of the United States are mere conclusions of law which are

not supported by the exhibits annexed to and forming part of the indictment, these exhibits show on the face thereof either that the instrument was not an obligation of the United States, and that if it was an obligation that it was not, in fact, altered.

In an indictment under the counterfeiting statute it is not sufficient to set forth the offense in the words of the statute unless those words of themselves fully, directly, expressly, and without uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished.

The offense at which the counterfeiting statute is aimed is similar to the common law offense of uttering a forged or counterfeit bill. In the case of counterfeiting, as in the case of uttering a forged or counterfeit bill, knowledge that the instrument is forged and counterfeit is essential to make it a crime; and an uttering, with intent to defraud, of an instrument, in fact counterfeit, but supposed by the defendant to be genuine, though within the words of the statute, would not be within its meaning and object. And therefore it is necessary, to charge

a crime, that the indictment allege that the defendant knew, of the instrument which he uttered, to be false, forged and counterfeit; otherwise the indictment does not charge a crime.

*United States v. Carll*, 105 U. S. 611;  
*United States v. White*, 171 Fed. Rep.  
777;  
*Dunbar v. United States*, 156 U. S.  
185, 193.

To charge the defendant with the commission of a crime under the statutes relating to counterfeiting when fraud is the gravamen of the indictment, it must also specify the acts constituting the fraud against the United States as distinguished from fraud perpetrated upon an individual. Therefore, unless the act of altering constitute fraud upon the United States, no crime is charged even if it be assumed that the alteration was intended to defraud an individual.

The argument presented by the government in support of the indictment for conspiracy in the case of *United States v. Janowitz*, No. 331, does not affect the instant case because here the defendant in error is the only defendant before

the bar and he is not charged with conspiracy to do anything in violation of any rule or regulation of any department. Here the question is whether or not he committed a crime under the counterfeiting statute and whether the obligation created by the affixation of the stamp to the card was altered by tearing that card or by detaching the stamp.

### **CONCLUSION.**

***The judgment of the District Court should therefore be affirmed.***

Respectfully submitted,

JOSEPH A. SEIDMAN,  
*Attorney for Defendant in Error.*

UNITED STATES v. SACKS.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

No. 48. Argued October 20, 1921.—Decided November 7, 1921.

1. Under the Act of September 24, 1917, amended September 24, 1918, cc. 56, 176, 40 Stat. 291, 966, authorizing the Secretary of the Treasury to borrow money and to issue therefor, at such price or prices and upon such terms and conditions as he might determine, war savings certificates in amounts of not more than \$100 to any one person at any one time, and of which no one person at any one time should hold more than \$1,000, and further providing that the Secretary might issue stamps, under such regulations and upon such terms and conditions as he might prescribe, to evidence payments for or on account of the certificates, the Secretary was empowered to issue non-transferable certificates valid only when bearing one or more such stamps and when endorsed with the name of its owner. Pp. 39, 41.
  2. War savings certificates and war savings certificate stamps, issued pursuant to the act and the regulations, are obligations of the United States within the meaning of §§ 148 and 151 of the Criminal Code. P. 40.
  3. One who tears war savings certificate stamps from a war savings certificate issued to another, with intent to use them apart from the certificate bearing the purchaser's name, alters the obligation with intent to defraud (the United States) in the sense of Criminal Code, § 148, since the purposes of the Act of September 24, 1917, *supra*, and the conditions provided to insure them, will thus be fraudulently defeated. P. 42.
  4. Possession of part of such certificate and attached stamps, with intent to defraud the United States as above, is a violation of Criminal Code, § 151. P. 42.
- Reversed.



WRIT of error under the Criminal Appeals Act, to review a judgment quashing an indictment. See *post*, 42.

*Mr. William C. Herron*, with whom *Mr. Assistant Attorney General Stewart* was on the brief, for the United States.

*Mr. Joseph A. Seidman*, for defendant in error, submitted.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This case presents for consideration an indictment in three counts for the violation, respectively, of §§ 148 and 151 of the Criminal Code of the United States, as dependent upon the construction of an act of Congress to which we shall refer.

The first two counts charge that Sacks did, "with intent to defraud, alter an obligation of the United States, to wit, a war savings certificate of the United States of the series of 1918, . . . in that [he] did . . . tear from the face of said war savings certificate two war savings certificate stamps of the United States of the series of 1918, thereto before attached."

The third count charges Sacks with having in his possession, with intent to defraud the United States, and with intent to pass and sell the same, an altered obligation of the United States, to wit, a portion of a war savings certificate of the United States of the series of 1918, with three war savings certificate stamps thereto attached, in that the portion which he had and kept in his possession had been torn from a whole war savings certificate.

The indictment is illustrated by having examples of the certificates attached. They certify, subject to the terms and conditions expressed thereon, that the owner will be entitled to receive January 1, 1923, in respect to each

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stamp of the series of 1918 then affixed thereto, the amount indicated thereon as then payable, or at his option, will be entitled to receive at an earlier date a lesser amount indicated by a table thereon.

Among the terms and conditions are the following: "(1) This certificate is not a valid obligation unless a United States War-Savings Certificate Stamp of the Series of 1918 is affixed hereto. (2) This certificate is of no value except to the owner named hereon, and is not transferable. (3) Not more than twenty United States War-Savings Certificate Stamps, and only such Stamps of the Series of 1918, may be affixed hereto. . . . (6) The law provides that no one person shall at any one time hold War-Savings Certificates to an aggregate amount exceeding One Thousand Dollars."

The names of the owners are endorsed on the certificates, and their addresses.

The indictment was quashed on Sacks' motion on the ground, recited in the judgment, that the indictment was not "authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of September 24, 1917, and section 6, and as amended by the act of Congress of September 24, 1918, section 2 thereof, and sections 148 and 151 of the Criminal Code of the United States, or under the construction of any other statute of the United States now in force."

The judgment and the action of the court are assigned as error. The construction of the sections of the Criminal Code and the act of Congress referred to is necessarily involved: Section 148 makes an offender "whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States. . . ." Section 151 makes an offender "whoever, with intent to defraud, shall pass, utter, publish, or sell," or attempt to do either act, "or shall keep in

possession or conceal with like intent, any falsely made, forged, counterfeited, or altered obligation or other security of the United States. . . ."

Section 147 of the Criminal Code defines obligations and securities of the United States to be evidences of indebtedness, and adds to a specific enumeration the comprehensive words "stamps and other representatives of value, of whatever denomination, which have been or may be issued under any act of Congress."

Section 154 makes dealing in the false and counterfeited obligations of either section an offense.

The Act of Congress of September 24, 1917, c. 56, 40 Stat. 291, authorizes the Secretary of the Treasury to borrow, from time to time on the credit of the United States, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices, and upon such terms and conditions as he may determine, war savings certificates of the United States on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Further detail of the act is not necessary except to say that the amount of certificates sold to any one person at any one time shall not exceed \$100—nor shall any one person at any one time hold more than \$1,000. And it is provided that the Secretary of the Treasury may upon such terms and regulations as he may prescribe, issue or cause to be issued, stamps to evidence payment for or on account of such certificates.

It will be observed from this statement of the provisions of the law that to sustain the indictment there must be the fact of an alteration of an obligation of the United States, or having in possession an altered obligation with intent to pass and sell the same. It is contended by Sacks that such was not the condition, and to sustain the contention two propositions are urged: (1) That neither the certificate nor the stamps was an obliga-

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tion of the United States. (2) That the removal of the stamps was the destruction of the certificate, not its alteration. The purpose of § 148, it is contended, is to prevent the utterance and passing of spurious instruments and the alteration of genuine ones either by changing their form, or increasing or decreasing their obligation. In development and illustration of the contention, it is asserted that the Government received full value for the stamps, and its liability thereon was fixed when the stamps came into Sacks' possession and continued the same no matter how many times the stamps changed hands. "The owner of the stamp could affix it to or remove it from the card [certificate] without changing the obligation of the United States." And further, "the definition to be given the word 'alteration' is no different in the case of a Government obligation than the alteration of a private obligation. If the alteration does not prejudice the rights of the obligor the act of alteration will not constitute a crime." Cases are cited in support of the contentions.

The contentions are based on a misapprehension of the act providing for the certificates and the necessary relation of the sections of the Criminal Code to the purposes of that act. Whether the certificates or the stamps be considered individual or composite obligations of the United States, necessarily the alteration of both or either is within § 148 of the Criminal Code. Their purpose is defeated and perhaps perverted by alteration. They are but instruments of the law and the law is to be considered. It provided an opportunity of investment for persons of small means, and the power to prescribe ways adequate to the purpose was given to the Secretary of the Treasury. In other words, details of execution were committed to him with power to give to the certificate and the stamps such character, quality and legal effect that he should consider to be efficient. And, exercising the power, he in-

cluded, as a condition to the validity of the certificate as an obligation of the United States, the affixing of a stamp thereto, and that not more than twenty stamps of the series of 1918 might be affixed, and that no one person could at any one time hold certificates of an aggregate amount exceeding \$1,000.

These conditions were defeated and intended to be defeated by the action of Sacks in tearing from the face of the certificate two stamps. Such action constituted an alteration of the certificate and the stamps with intent to use the same without the remainder of the certificate signed by the purchaser and thus to defraud the United States by defeating the purposes of the law of September 24, 1917, and the circulars of the Secretary of the Treasury empowered to be issued under that law, and the terms and conditions endorsed on the certificate, and the court's decision to the contrary was a misconstruction of the Act of September 24.

There therefore was a violation of § 151 as charged in the third count of the indictment, Sacks having in his possession, with intent to defraud the United States, an altered obligation of the United States.

*Judgment reversed and cause remanded for further proceedings in conformity with this opinion.*